

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON BUSINESS AND LABOR**

**Call to Order:** By **CHAIRMAN JOE MCKENNEY**, on February 5, 2003 at 8:00 A.M., in Room 172 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Joe McKenney, Chairman (R)  
Rep. Jim Keane, Vice Chairman (D)  
Rep. Donald Steinbeisser, Vice Chairman (R)  
Rep. Bob Bergren (D)  
Rep. Rod Bitney (R)  
Rep. Sylvia Bookout-Reinicke (R)  
Rep. Nancy Fritz (D)  
Rep. Dave Gallik (D)  
Rep. Kathleen Galvin-Halcro (D)  
Rep. Ray Hawk (R)  
Rep. Bob Lawson (R)  
Rep. Rick Maedje (R)  
Rep. Gary Matthews (D)  
Rep. Scott Mendenhall (R)  
Rep. Penny Morgan (R)  
Rep. Allen Rome (R)  
Rep. Sandy Weiss (D)  
Rep. Bill Wilson (D)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Bart Campbell, Legislative Branch  
Alberta Strachan, Committee Secretary

**Please Note.** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: HB 501 (1/31/03); HB 438 (1/31/03);  
HB 482 (1/31/03)

Executive Action: HB 332 Tabled; HB 184 Do Pass As  
Amended; HB 501 Do Pass As Amended;  
HB 462 Table

**HEARING ON HB 501**

**Sponsor:** REP. MARK E. NOENNIG, HD 9, Billings

**Opening Statement by Sponsor:**

REP. NOENNIG read the title of the bill: An act revising the provisions related to licensure of radiologic technologists; providing for approval by the Board of Radiologic Technologists of a licensed radiologic technologist to perform the functions of a radiologist assistant under supervision of a radiologist.

***{Tape: 1; Side: A; Approx. Time Counter: 43 - 73}***

**Proponents' Testimony:**

**Roland Darby, M.D., Chairman, Department of Radiology, Deaconess Billings Clinic,** said the growth in radiology has been great. The workload has increased at a rate of approximately 6% per year. There are six job opportunities for every resident coming out of a radiology program. A radiologist assistant will not be responsible for final interpretation of the images. They neither make the final diagnosis nor prescribe medicines or therapies. They are an extension of the radiologist and will practice under his supervision. Dr. Darby also provided testimony from Kathleen Ryan, M.D., John V. Hanson, M.D., Timothy Erz, RDMS.

**EXHIBIT (buh25a01)**

***{Tape: 1; Side: A; Approx. Time Counter: 73 - 100}***

**Courtney Konop, Director of Radiology, Deaconess Billings Clinic,** provided written testimony.

**EXHIBIT (buh25a02)**

***{Tape: 1; Side: A; Approx. Time Counter: 100 - 128}***

**William Lindsey, Legislative Representative, Board of Legislative Technologists,** said they were in favor of this bill. This bill simply says what duties the technologists may do.

***{Tape: 1; Side: A; Approx. Time Counter: 128 - 141}***

**Gordy Higgins, Department of Labor & Industry,** said they support the bill with the appropriate changes to the codification construction.

***{Tape: 1; Side: A; Approx. Time Counter: 141 - 146}***

**Tom Ebzery, Attorney at Law, St. Vincent Hospital, Billings,** said they support the bill.

**{Tape: 1; Side: A; Approx. Time Counter: 146 - 158}**

**John Flink, Montana Hospital Association,** said the technology in the health care world is changing dramatically. The new category of radiological technologists is an important addition to help utilize the technology.

**{Tape: 1; Side: A; Approx. Time Counter: 158 - 175}**

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. MENDENHALL** asked Dr. Darby the range of radiological procedures the technologist were able to do.

**{Tape: 1; Side: A; Approx. Time Counter: 175 - 206}**

**REP. WEISS** asked Dr. Darby if a physician was available at all times during procedures.

**{Tape: 1; Side: A; Approx. Time Counter: 206 - 230}**

**Closing by Sponsor:**

The sponsor closed.

**{Tape: 1; Side: A; Approx. Time Counter: 230 - 238}**

**HEARING ON HB 438**

**Sponsor:** **REP. GARY FORRESTER, HD 16, Billings**

**Opening Statement by Sponsor:**

**REP. FORRESTER** read the title of the bill: An act revising the requirements for payments to contractors and subcontractors with respect to construction contracts; providing that a construction contract may provide for a billing cycle that is other than a monthly billing cycle; providing that certain construction contract provisions are against state policy and are void and unenforceable; establishing conditions under which a contractor or subcontractor may suspend performance or terminate a construction contract.

**{Tape: 1; Side: A; Approx. Time Counter: 238 - 266}**

**Proponents' Testimony:**

**Carl Schweitzer, Sub Contractors Association of Montana (ASAM)**, explained the changes in the bill and then provided a construction payment timetable.

**EXHIBIT** (buh25a03)

**{Tape: 1; Side: A; Approx. Time Counter: 266 - 478}**

**Jerry Cooper, Great Falls masonry contractor**, spoke of his problems as a subcontractor and collecting the wages which were due him.

**{Tape: 1; Side: A; Approx. Time Counter: 478 - 500}**

**Margaret Morgan, State Association of the Independent Electrical Contractors**, said this bill will bring certainty and accountability to the payment process. Subcontractors with limited capital can only be stretched so far; and prompt payment on work performed can make a difference.

**{Tape: 1; Side: B; Approx. Time Counter: 1 - 9}**

**Dick Anderson, Dick Anderson Construction**, said this bill is about being paid on time.

**{Tape: 1; Side: B; Approx. Time Counter: 9 - 44}**

**Cary Hegreberg, Montana Contractors Association**, said this issue of prompt payment has become a bigger issue to all of the members.

**{Tape: 1; Side: B; Approx. Time Counter: 44 - 72}**

**Opponents' Testimony:**

**John Fitzpatrick, Northwest Energy**, said they do an extensive amount of construction every year. They do endorse the concept of this bill and with amendments it could be good for contractors and subcontractors.

**{Tape: 1; Side: B; Approx. Time Counter: 72 - 164}**

**Robert Throssell, Montana Technical Counsel**, said this bill interferes with individual contractual rights. **{Tape: 1; Side: B; Approx. Time Counter: 164 - 250}**

**Rose Hughes, American Counsel of Engineering Companies**, provided a copy of the bill with their revisions to the alternative billing cycle.

**EXHIBIT** (buh25a04)

**{Tape: 1; Side: B; Approx. Time Counter: 250 - 317}**

**Shaun Bubb, Montana School Board Association**, said they have technical concerns with the existing bill.

**{Tape: 1; Side: B; Approx. Time Counter: 317 - 335}**

**Doug Kaercher, Montana Association of Counties**, said they were sympathetic to the cause of the contractors. Due to the nature of the local government projects, they have considerable reliance on federal and state dollars for funding of these projects. The exemption of public entities is a good addition to this bill.

**{Tape: 1; Side: B; Approx. Time Counter: 335 - 356}**

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. BERGREN** asked Mr. Currie about the construction projects for the Department of Transportation. **Jim Currie, Montana Department of Transportation**, said the reason they didn't testify on the bill was due to the fact of their neutral standing. Apparently this bill does not impact state agencies.

**{Tape: 1; Side: B; Approx. Time Counter: 356 - 392}**

**REP. BOOKOUT-REINICKE** asked Mr. Cooper questions about federal construction; i.e. "Is there still interest paid if a payment is not received by the contractor in a timely manner?" **Mr. Cooper** said he had never received any interest with a federal payment.

**{Tape: 1; Side: B; Approx. Time Counter: 392 - 415}**

**REP. MORGAN** asked Mr. Fitzpatrick about the "prompt-pay" clause in a contract. **Mr. Fitzpatrick** said he was not aware of any particular construction contracts with those provisions. There isn't a provision in state law to speak of this.

**{Tape: 1; Side: B; Approx. Time Counter: 415 - Tape: 2; Side: A; Approx. Time Counter: 44}**

**REP. BITNEY** asked Mr. Schweitzer some subcontractor questions regarding one sub who didn't do a good job but the sub following his work was good. Shouldn't the last sub be paid immediately.

**Mr. Schweitzer** said they should, but most often are not.

**{Tape: 2; Side: A; Approx. Time Counter: 45 - 143}**

**REP. MAEDJE** asked Mr. Fitzpatrick about language in a contract regarding inappropriate language in a contract and payment provisions. **Mr. Fitzpatrick** reiterated previous testimony.

**{Tape: 2; Side: A; Approx. Time Counter: 143 - 257}**

**Closing by Sponsor:**

The sponsor closed.

***{Tape: 2; Side: A; Approx. Time Counter: 257 - 333}***

**HEARING ON HB 482**

**Sponsor:** REP. GARY L. FORRESTER, HD 16, Billings

**Opening Statement by Sponsor:**

REP. FORRESTER read the title of the bill: An act providing that a provision in a construction contract that requires one party to the contract to indemnify another party to the contract, or the other party's officers, employees, or agents, for liability, losses, damages, or costs is void as against the public policy of this State; authorizing a construction contract to contain a provision requiring a party to a contract to purchase a project specific insurance policy.

***{Tape: 2; Side: B; Approx. Time Counter: 333 - 353}***

**Proponents' Testimony:**

Carl Schweitzer, ASAM, provided written testimony regarding insurance of a contractor and indemnification provisions for the Montana Department of Transportation.

**EXHIBIT** (buh25a05)

***{Tape: 2; Side: A; Approx. Time Counter: 353 - Tape: 2; Side: B; Approx. Time Counter: 39; Comments: Side B was recorded before Side A}***

Cary Hegreberg, Montana Contractors Association, said there should be greater concern for subcontractors than the general contractor.

***{Tape: 2; Side: B; Approx. Time Counter: 40 - 64}***

Dick Anderson, Dick Anderson Construction, said contractors should only insure what they control on construction projects.

***{Tape: 2; Side: B; Approx. Time Counter: 64 - 89}***

Jerry Cooper, representing himself, said the cost of a construction project insurance is deductible.

***{Tape: 2; Side: B; Approx. Time Counter: 89 - 101}***

**Roger McGlenn, Executive Director, Independent Insurance Agents of Montana**, said this bill is a moderate approach to the problem. Contractor availability policies are sometimes not available.  
{Tape: 2; Side: B; Approx. Time Counter: 101 - 119}

**Opponents' Testimony:**

**Jim Currie, Montana Department of Transportation**, said their indemnification language in their contracts has remained the same since 1994 and it's worked well. There has not been an increase of costs. If this bill passes, it will cost the taxpayers money. Increased litigation costs, increased documentation costs, longer period of time for settlement are just a few of the concerns. The traveling public is going to be the entity who will suffer. If the goal is to provide the best product to the taxpayer for the least amount of money, this bill should die.  
{Tape: 2; Side: B; Approx. Time Counter: 119 - 147}

**Bill Gianoulis, Attorney at Law, Tort Claims for the State of Montana**, said they oppose the bill because they believe it will cost the taxpayer more.  
{Tape: 2; Side: B; Approx. Time Counter: 147 - 260}

**Hal Luttschwager, Risk Manager, Missoula County**, said they do not believe the current system is broken regarding contractual obligation. It may not function well on the insurance side.  
{Tape: 2; Side: B; Approx. Time Counter: 260 - 284}

**Shaun Bubb, Montana School Board Association**, said the bill being presented has significant legal changes and legal implications for the school districts around Montana. Those legal changes will bring with it some financial recourse. He indicated he would be presenting written testimony.  
{Tape: 2; Side: B; Approx. Time Counter: 284 - 298}

**Doug Kaercher, Montana Association of Counties**, said they oppose this bill.  
{Tape: 2; Side: B; Approx. Time Counter: 298 - 305}

**Informational Testimony:**

**Jacqueline Lenmark, American Insurance Association**, said she was available for questions.

**Al Smith, Montana Trial Lawyers Association**, said he was available for questions.

Questions from Committee Members and Responses: None

Closing by Sponsor:

The sponsor closed.

*{Tape: 2; Side: B; Approx. Time Counter: 371 - 428}*

EXECUTIVE ACTION ON HB 332

*{Tape: 3; Side: A; Approx. Time Counter: 1 - 400}*

REP. STEINBEISSER reported on the subcommittee's work with HB 332 and HB 184.

Motion: REP. BERGREN moved HB 332 DO NOT PASS.

Motion/Vote: REP. KEANE made a SUBSTITUTE MOTION TO TABLE HB 332. A roll call vote was taken. Motion carried 16-2 with REPS. BERGREN, and WILSON voting no.

EXECUTIVE ACTION ON HB 184

Motion: REP. WILSON moved HB 184 DO PASS.

Motion/Vote: REP. WILSON moved HB 184 AMENDMENTS. Motion carried 18-0.

**EXHIBIT** (buh25a06)

Motion/Vote: REP. WILSON moved HB 184 DO PASS AS AMENDED. A roll call vote was taken. Motion carried 14-4 with REPS. MCKENNEY, STEINBEISSER, HAWK, and ROME voting no.

EXECUTIVE ACTION ON HB 501

Motion: REP. BOOKOUT-REINICKE moved HB 501 DO PASS.

Motion/Vote: REP. BOOKOUT-REINICKE moved HB 501 TECHNICAL AMENDMENT. Motion carried 18-0.

Motion: REP. BOOKOUT-REINICKE moved HB 501 DO PASS AS AMENDED.

Discussion:

REP. FRITZ opposed the bill.

REPS. MENDENHALL, MORGAN, MATTHEWS, KEANE, and GALLIK supported the bill.

Vote: Motion carried 15-3 on HB 501 DO PASS AS AMENDED with REPS. FRITZ, GALVIN-HALCRO, and WEISS voting no.

EXECUTIVE ACTION ON HB 462

Motion: REP. BOOKOUT-REINICKE moved HB 462 DO PASS.

Discussion:

REP. GALVIN-HALCRO accepted written testimony from Planned Parenthood.

**EXHIBIT** (buh25a07)

REPS. BERGREN, WEISS, and GALLIK oppose this bill.

Motion/Vote: REP. MAEDJE moved HB 462 AMENDMENT. A roll call vote was taken. Motion carried 10-8 with REPS. KEANE, BERGREN, FRITZ, GALLIK, GALVIN-HALCRO, LAWSON, MORGAN, and WEISS voting no.

Motion/Vote: REP. MAEDJE moved HB 462 DO PASS AS AMENDED. A roll call vote was taken. Motion failed 9-9 with REPS. MCKENNEY, STEINBEISSER, BITNEY, BOOKOUT-REINICKE, HAWK, MAEDJE, MENDENHALL, MORGAN, and ROME voting yes.

Motion/Vote: REP. MENDENHALL made SUBSTITUTE MOTION TO TABLE HB 462. A roll call vote was taken. Motion carried 10-8 with REPS. STEINBEISSER, BITNEY, BOOKOUT-REINICKE, HAWK, MAEDJE, MENDENHALL, MORGAN, and ROME voting no.

**ADJOURNMENT**

Adjournment: 11:35 A.M.

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REP. JOE MCKENNEY, Chairman

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ALBERTA STRACHAN, Secretary

JM/AS

**EXHIBIT** (buh25aad)